

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO. 1833 OF 2003

IN

EXECUTION APPLICATION NO.377 OF 2003

M/s. Khanna Rayon Industries
ltd and Ors. Claimants
v/s.
Shri Kishor Danabhai Patel
and Ors. Respondents
AND
Shri Kesholal Khanna Charitable
Trust Applicants

Leon Samuel with S.N. Shah i/b. Purnanand and co.
for judgment creditor.
J.P. Sen with Mrs. Moghe i/b. Mehta Girdharlal for
the applicants.

CORAM: S.U. KAMDAR, J.

DATE : 7TH FEBRUARY, 2005.

P.C. :

1. A further affidavit dated 31.1.2005 has been filed by the applicant in respect of the present chamber summons. It is the case of the applicant that the ownership of the property belongs to a trust

known as Kesholal Khanna Charitable Trust, in respect of which claims are made. The trustees of the said trust are five applicants. Applicant no.1 and 3 are brothers, applicant no.2 is the wife of applicant no.1. The said trust is supposed to have created tenancy in favour of the company known as M/s. Khanna Silk Mills Pvt. Ltd in respect of flat no.8 and through the said Khanna silk Mills one of the trustees namely Sumesh Khanna is in use, occupation and possession of the said premises. He is the Chief Executive officer of Khanna silk Mills. In so far as flat no.13 is concerned the tenancy is created in favour of M/s. Eat India P.Ltd of which Sumesh Khanna alongwith Sharad Khanna and Shammi Khanna are directors.

2. The respondent herein are the decree holders in arbitration proceedings and a decree has been passed against the company M/s. Khanna Rayon Industries Ltd. Both Sharad and Suresh are also the trustees of the said trust. Sumesh is not a trustee but a judgment debtor of so called tenancy of the said premises. In my view the matter requires a

detail consideration and therefore the matter is adjourned to court for recording evidence under order 21 rule 1 of the Code of Civil Procedure. In so far as the attachment pertaining to the movables in the premises are concerned namely electric gadgets, furnitures and fixtures, admittedly Sumesh Khanna is in possession of the said movables. In so far as flat no.18 is concerned the applicants have stated that there are no documentary evidence to show that the electric gadgets, furniture and fixtures belongs to other occupants of the said premises. No material evidence of any nature whatsoever has been produced to indicate that the said gadgets, and the furnitures and fixtures belongs to a other trust or a company or to any other person. The learned counsel for the applicant has submitted that in view of the fact that the proceedings being adjourn to court for recording evidence in respect of the furnitures and fixtures and therefore the application should not be granted in so far as the gadgets and or furnitures and fixtures are concerned. The provision of order 21 rule 101 deals with issues which are required to be determined by recording evidence. In so far as

gadgets, furniture and fixtures is concerned there is no iota of evidence produced by the applicant herein. In so far as the items are concerned i.e. furnitures and fixtures are independent properties. In view thereof I do not accept the request of the learned counsel for the applicant that in so far as the gadgets and furnitures are concerned the same should be adjourned to court for recording evidence. In view thereof, I direct that in so far as the furnitures and fixtures are concerned the attachment shall continue but no further steps will be taken in execution of the said decree for sale and realisation of the said flat. However the respondent decree holder will be at liberty to execute the decree in so far as the electric gadgets, furniture and fixture only so far as flat no.8 is concerned.

3. In so far as the flat no.13 is concerned, since the judgement debtor is not in possession of the said gadgets, furnitures and fixtures ought not to be sold as it cannot be termed as belonging to the occupier of the said flat. Chamber summons disposed off accordingly.

4. The learned counsel for the applicant restricts prayer (a) of the chamber summons only in respect of flat no.8 and flat no.13 excluding the gadgets, furnitures and fixtures therein. In view thereof I direct that the matter be adjourned to court for recording evidence.

SD/-
